



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET - SUITE 300
DENVER, CO 80202-2466
Phone 800-227-8917
<http://www.epa.gov/region08>

November 17, 2003

Ref: 8ENF-L

SENT VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Donald Clark, President and Registered Agent for
Mid America Steel, Inc.
P.O. Box 2807
92 Northern Pacific Avenue
Fargo, ND 58108-2807

Re: In the Matter of Mid America Steel, Inc.
Docket No. CWA-08-2004-0008
Administrative Complaint and Notice of Opportunity
for Hearing

Dear Mr. Clark:

Enclosed is an Administrative Complaint and Notice of Opportunity for Hearing ("Complaint") filed by the U.S. Environmental Protection Agency ("EPA") against Mid America Steel, Inc., pursuant to its authority under section 311(b)(6)(B)(i) of the Clean Water Act (the "Act"), 33 U.S.C. § 1321(b)(6)(B)(i). EPA alleges in the Complaint that Mid America Steel, Inc.'s, structural steel manufacturing facility ("facility") located at 92 Northern Pacific Avenue, Fargo, North Dakota, is in violation of the oil pollution prevention requirements set forth at 40 C.F.R. part 112 and section 311(b)(6)(A) of the Act, 33 U.S.C. § 1321(b)(6)(A).

Specifically, the Complaint alleges that Mid America Steel, Inc., failed to prepare and implement a Spill Prevention, Control and Countermeasures ("SPCC") plan for its facility in writing and in accordance with 40 C.F.R. §§ 112.7 and 112.8 as required by 40 C.F.R. § 112.3. EPA discovered the violations during an unannounced SPCC inspection of the facility on September 10, 2002. The Complaint proposes a penalty of \$27,263 for the alleged violations.

You have the right to a hearing to contest the factual allegations in the Complaint. If you admit the allegations, or the allegations are found to be true after you have had an opportunity for a hearing, you have the right to contest the penalty proposed in the Complaint. A copy of EPA's administrative procedures is enclosed for your review. Please note the requirements for an answer set forth in 40 C.F.R. §§ 22.15 and 22.38. If you wish to contest the allegations in the



Complaint or the penalty proposed in the Complaint, you must file a written answer within thirty (30) days of receipt of the enclosed Complaint with the EPA Regional Hearing Clerk at the following address:

Ms. Tina Artemis, Regional Hearing Clerk (8RC)
U.S. EPA, Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

If you do not file an answer by the applicable deadline, you will have defaulted and each allegation in the Complaint will be deemed to be admitted as true. You will have waived your right to appear in this action for any purpose and will also have waived your right to be notified of any Agency proceedings that occur before a civil penalty may be imposed. Provided that the Complaint is legally sufficient, EPA may file a motion for default for the amount proposed in the Complaint.

Whether or not you request a hearing, you may confer informally with EPA concerning the alleged violations or the amount of the proposed penalty. You have the right to be represented by an attorney at any stage of the proceedings, including any informal discussions with EPA, but it is not required. A request for an informal conference does not extend the thirty (30) day period for filing your answer and/or requesting a hearing.

If you have any questions, the most knowledgeable people on my staff regarding this matter are Amy Swanson and Donna Inman. Ms. Swanson is in our Legal Enforcement Program and can be reached at (303) 312-6906. Ms. Inman is in our Technical Enforcement Program and can be reached at (303) 312- 6201.

We urge your prompt attention to this matter.

Sincerely,

SIGNED

Elisabeth Evans
Technical Enforcement Director
Office of Enforcement, Compliance
and Environmental Justice

Enclosures: Complaint and Notice of Opportunity for Hearing
Consolidated Rules of Practice, 40 C.F.R. Part 22
SBREFA Information Sheet
Notice of SEC Disclosure

cc: Raymond Lambert, State of North Dakota Fire Marshall

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

IN THE MATTER OF)	Docket No. CWA-08-2004-0008
)	
Mid America Steel, Inc.)	ADMINISTRATIVE COMPLAINT AND
92 Northern Pacific Avenue)	OPPORTUNITY TO REQUEST HEARING
Fargo, ND 58108)	
)	Proceeding to Assess Class I Civil Penalty
Respondent.)	Under Section 311 of the Clean Water Act

AUTHORITY

1. This is a civil administrative action issued under the authority vested in the Administrator of the Environmental Protection Agency ("EPA") by section 311(b)(6)(B)(i) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. § 1321(b)(6)(B)(i), as amended by the Oil Pollution Act of 1990. The Administrator has properly delegated this authority to the undersigned EPA official. This proceeding is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Consolidated Rules") set forth at 40 C.F.R. part 22, a copy of which is enclosed.

GENERAL ALLEGATIONS

2. Respondent Mid America Steel, Inc., is a corporation organized under the laws of and is authorized to do business in the State of North Dakota.

3. Respondent is a "person" within the meaning of sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§ 1321(a)(7) and 1362(5).

4. Respondent owns and operates a manufacturing facility that fabricates structural steel components located at 92 Northern Pacific Avenue, Cass County, Fargo, North Dakota

(hereafter “facility”). The facility includes, but is not limited to, a 10,000 gallon fuel storage tank, a 10,000 gallon diesel fuel tank, a 3,000 gallon fuel storage tank, a 500 gallon waste oil tank and a 200 gallon portable kerosene tank.

5. Diesel fuel, gasoline, kerosene and waste oil are oils within the meaning of “oil” as defined at section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1).

6. Respondent stores, transfers, distributes, uses or consumes oil or oil products at the facility.

7. Respondent is an "owner and operator" of an "onshore facility" within the meaning of sections 311(a)(6) and (10) of the Act, 33 U.S.C. §§ 1321(a)(6) and (10).

8. The facility is a “non-transportation related” “onshore facility” within the meaning of 40 C.F.R. § 112.2.

9. The facility has a total above-ground oil storage capacity greater than 1,320 gallons.

10. The facility is located approximately 100 feet west of the Red River.

11. The Red River is a “navigable water” and a “waters of the United States” within the meaning of section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1.

12. Section 311(j)(1)(C) of the Act, 33 U.S.C. § 1321(j)(1)(C), provides that the President shall issue regulations "establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil . . . from vessels and from onshore and offshore facilities, and to contain such discharges"

13. EPA promulgated the oil pollution prevention regulations, set forth at 40 C.F.R. part 112. 40 C.F.R. § 112.1(b) states that the requirements of part 112 apply:

to owners or operators of non-transportation related onshore and offshore facilities

engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil or oil products, and which, due to their location, could reasonably be expected to discharge oil in harmful quantities, as defined in part 110 of this chapter, into or upon the navigable waters of the United States or adjoining shorelines...”

14. The facility is a non-transportation onshore facility which, due to its location, could reasonably be expected to discharge oil to a navigable water of the United States (as defined by Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1) or its adjoining shoreline that may either (1) violate applicable water quality standards or (2) cause a film or sheen or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

15. The facility is subject to the oil pollution prevention requirements of 40 C.F.R. part 112, pursuant to section 311(j) of the Act, 33 U.S.C. § 1321(j), and its implementing regulations.

16. 40 C.F.R. § 112.3 requires that owners or operators of onshore and offshore facilities prepare a Spill Prevention, Control, and Countermeasure (“SPCC”) plan in writing, and in accordance with applicable sections of part 112 including, but not limited to, sections 112.7 and 112.8.

17. Section 311(b)(6)(A) of the Act, 33 U.S.C. § 1321(b)(6)(A), states in pertinent part that any owner, operator, or person in charge of any vessel, onshore facility or offshore facility (ii) who fails or refuses to comply with any regulation issued under subsection (j) of this section to which that owner, operator, or person in charge is subject, may be assessed a class I or class II civil penalty by ... the Administrator.

18. On or about September 10, 2002, an authorized EPA inspector entered the facility with the consent of Respondent to inspect it for compliance with the CWA and SPCC

regulations.

19. At the time of the inspection, the facility had a total oil storage capacity of 23,700 gallons.

20. The facility did not have a written SPCC plan at the time of the inspection.

21. The following SPCC implementation measures were found to be deficient at the time of the inspection:

- a. inadequate/compromised secondary containment in bulk fuel storage area due to missing drain cap;
- b. facility has no established procedures for draining rainwater from secondary containment and no records of drainage events;
- c. only casual inspections of aboveground tanks performed. No inspection records maintained;
- d. no secondary containment for waste oil tank and mobile kerosene tanks;
- e. no secondary containment for loading/unloading areas;
- f. no warning or barrier system to prevent the premature departure of trucks during loading/unloading;
- g. drainage events from diked areas were not supervised and recorded;
- h. undiked areas of the facility do not drain to a pond, basin, or equivalent catchment device;
- i. inspections not performed according to written procedures. No documentation of inspections maintained;
- j. facility without established procedures;
- k. no discharge prevention meetings held; and

1. no SPCC training of facility personnel.

22. Respondent failed to prepare and implement an SPCC plan in writing and in accordance with the regulations at 40 C.F.R. §§ 112.7 and 112.8 as required by 40 C.F.R. § 112.3.

23. Respondent's failure to prepare and implement an SPCC plan for the facility in writing and in accordance with the regulations at 40 C.F.R. §§ 112.7 and 112.8 from September 10, 2002, through and including November 17, 2003 (a duration of approximately 403 days) constitutes two violations of 40 C.F.R. § 112.3 and CWA § 311(b)(6)(A)(ii), 33 U.S.C. § 1321(b)(6)(A)(ii), and is subject to a maximum penalty of \$11,000 per day of violation.

PROPOSED CIVIL PENALTY

24. Based on the foregoing Allegations and pursuant to the authority of section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i), and 40 C.F.R. § 19.4, Complainant proposes the assessment of administrative penalties against the Respondent in the amount of \$27,263. Complainant proposes this penalty amount after considering the applicable statutory penalty factors in section 311(b)(8) of the Act, 33 U.S.C. § 1321(b)(8): the seriousness of the violation, the economic benefit to the violator, if any, resulting from the violation, the degree of culpability involved, any other penalty for the same incident, any history of prior violations, the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge, the economic impact of the penalty on the violator, and any other matters as justice may require.

25. Specifically, the Respondent's noncompliance is deemed to be major as the violations essentially undermine the ability of the Respondent to prevent or respond to discharges of oil from impacting waters of the United States. The facility did not have a written SPCC plan

and twelve SPCC implementation measures, including the lack of any secondary containment for any of the tanks, were deficient on the date of the inspection. The potential environmental impact from a discharge would be moderate as the facility is located approximately 100 feet west of the Red River. The Respondent did not qualify for any penalty reduction based on mitigation factors. No additions were made to the proposed penalty amount based on either a history of violations or economic benefit.

TERMS OF PAYMENT FOR QUICK RESOLUTION

26. If Respondent does not contest the findings and penalty proposal set out above, this action may be resolved by paying the proposed penalty in full pursuant to 40 CFR § 22.18. If such payment is made within 30 calendar days of receipt of this Complaint, no answer need be filed. For more time for payment, Respondent may file a statement agreeing to pay the penalty within 30 days of receipt of the Complaint, then pay the money within 60 days of such receipt. Payment is to be made by sending a cashier's or certified check payable to "Oil Spill Liability Trust Fund," with the docket number and name of the facility written on the check, to:

Jane Nakad
Technical Enforcement Program (8ENF-UFO)
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

Payment of the penalty in this manner does not relieve Respondent of its obligation to comply with the requirements of the statute and regulations. Payment of the penalty in this manner shall constitute consent by Respondent to the assessment of the proposed penalty and a waiver of Respondent's right to a hearing on this matter.

OPPORTUNITY TO REQUEST A HEARING

27. As provided in the Act, a Respondent has the right to a public hearing to contest

this Complaint. If you (1) contest the factual claims made in this Complaint; (2) contest the appropriateness of the proposed penalty; and/or (3) assert that you are entitled to judgment as a matter of law, you must file a written answer in accordance with section 22.15 and 22.38 of the Consolidated Rules within 30 calendar days after receipt of this Complaint. Your answer must (1) clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint with regard to which you have knowledge; (2) state circumstances or arguments which are alleged to constitute grounds for defense; (3) state the facts you dispute; (4) the basis for opposing the proposed relief; and (5) specifically request an administrative hearing, if desired. Failure to admit, deny, or explain any material factual allegation in this Complaint will constitute an admission of the allegation.

The answer and one copy must be sent to:

Tina Artemis, Regional Hearing Clerk (8RC)
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, Colorado 80202-2466

and a copy must be sent to the following attorney:

Amy Swanson, Enforcement Attorney (8ENF-L)
U.S. EPA Region 8, Legal Enforcement Program
999 18th Street, Suite 300
Denver, CO 80202-2466
Telephone: (303) 312-6906

IF YOU FAIL TO REQUEST A HEARING, YOU WILL WAIVE YOUR RIGHT TO FORMALLY CONTEST ANY OF THE ALLEGATIONS SET FORTH IN THE COMPLAINT.

IF YOU FAIL TO FILE A WRITTEN ANSWER OR PAY THE PROPOSED PENALTY WITHIN THE 30 CALENDAR DAY TIME LIMIT, A DEFAULT JUDGMENT MAY BE ENTERED PURSUANT TO 40 C.F.R. § 22.17. THIS JUDGMENT MAY IMPOSE THE PENALTY PROPOSED IN THE COMPLAINT.

SETTLEMENT CONFERENCE

28. The EPA encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the Act and applicable regulations and is willing to explore this possibility in an informal settlement conference. If you (or your attorney if you choose to be represented by one) have any questions or wish to have an informal settlement conference with EPA, please call Amy Swanson at (303) 312-6906. Please note that a request for, scheduling of, or participation in a settlement conference does not extend the period for filing an answer and request for hearing as set out above. The settlement process, however, may be pursued simultaneously with the administrative litigation procedures found in the Consolidated Rules. If a settlement can be reached, its terms must be expressed in a written consent agreement, signed by the parties and incorporated into a final order signed by the Regional Judicial Officer.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8**
Complainant.

Date: 11/17/03 By: **SIGNED**
Elisabeth Evans, Director
Technical Enforcement Program

Date: 11/17/03 By: **SIGNED**
David J. Janik, Supervisory Enforcement Attorney
Legal Enforcement Program

Date: **11/17/03**

SIGNED

Amy Swanson, Enforcement Attorney
U.S. EPA, Region 8
999 18th Street, Suite 300 (8ENF-L)
Denver, CO 80202-2466
Colorado Atty. Reg. No. 26488
Telephone: 303/312-6906
Facsimile: 303/312-6953

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING was hand-carried to the Regional Hearing Clerk, EPA Region 8, 999 18th Street, Suite 300, Denver, Colorado, and that a true copy of the same was sent via certified mail to:

Donald Clark, President and Registered Agent for
Mid America Steel, Inc.
P.O. Box 2807
92 Northern Pacific Avenue
Fargo, ND 58108-2807

11/17/03
Date

SIGNED
Judith McTernan

IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS, PLEASE CONTACT THE REGIONAL HEARING CLERK.

THIS DOCUMENT WAS FILED IN THE RHC'S OFFICE ON NOVEMBER 17, 2003.